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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
TUCSON DIVISION**

Center for Biological Diversity, )

Plaintiff, )

v. )

U.S. Fish and Wildlife Service; )  
Martha Williams, in her official )  
capacity as Director of the U.S. Fish )  
and Wildlife Service; and Debra )  
Haaland, in her official capacity as )  
Secretary of the U.S. Department of )  
the Interior, )

Defendants. )

Case No.: 4:23-cv-00113-JCH

**STIPULATED SETTLEMENT  
AGREEMENT**

1           This Stipulated Settlement Agreement (“Agreement”) is entered into by and  
2 between the Center for Biological Diversity (“Plaintiff”) and the United States Fish and  
3 Wildlife Service (“FWS”), Martha Williams, in her official capacity as Director of the  
4 FWS, and Debra Haaland, in her official capacity as Secretary of the Department of  
5 Interior (collectively, “Federal Defendants” and, with Plaintiff, “the Parties”), who, by  
6 and through their undersigned counsel, state as follows:  
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8           WHEREAS, the Endangered Species Act (“ESA”) provides that, to the maximum  
9 extent practicable, within 90 days of receiving a listing petition, the Secretary shall make  
10 a finding as to whether the petition presents substantial scientific or commercial  
11 information indicating that the petitioned action may be warranted, 16 U.S.C. §  
12 1533(b)(3)(A) (“90-day finding”);  
13  
14

15           WHEREAS, the ESA provides that within 12 months after receiving a petition that  
16 is found to present substantial information indicating the petitioned action may be  
17 warranted, the Secretary shall make a finding as to whether the petitioned action is not  
18 warranted, warranted but precluded, or warranted, 16 U.S.C. § 1533(b)(3)(B) (“12-month  
19 finding”);  
20

21           WHEREAS, the ESA provides that within one year of determining that listing a  
22 species is warranted and publishing a proposed rule listing a species, the Secretary shall  
23 publish in the Federal Register a final regulation implementing that determination or  
24 withdrawing the proposed rule, 16 U.S.C. § 1533(b)(6) (“final listing determination”);  
25

26           WHEREAS, the ESA provides that, to the maximum extent practicable, the  
27

1 Secretary shall designate critical habitat for a species concurrent with a final listing  
2 determination that a species is endangered or threatened, unless the Secretary determines  
3 that designation of critical habitat “would not be prudent,” or otherwise that critical habitat  
4 is “not determinable” at the time of a final listing determination that a species is  
5 endangered or threatened, in which case the Secretary may designate critical habitat within  
6 one year of such final listing determination, 16 U.S.C. § 1533(a)(3)(A), §  
7 1533(b)(6)(C)(ii);  
8

9 WHEREAS, under 16 U.S.C. § 1533(b)(7) and 50 C.F.R. § 424.20, FWS has the  
10 discretion to issue temporary listings in response to situations FWS determines to be  
11 emergencies posing a significant risk to the well-being of any species;  
12

13 WHEREAS, on March 7, 2023, Plaintiff filed a Complaint in the above-captioned  
14 case, Dkt. 1, to compel FWS to complete certain actions under the ESA by dates certain  
15 for twelve species: final listing determinations for alligator snapping turtle (*Macrochelys*  
16 *temminckii*), Suwannee alligator snapping turtle (*Macrochelys suwanniensis*), Pearl River  
17 map turtle (*Graptemys pearlensis*), Wright’s marsh thistle (*Cirsium wrightii*), bracted  
18 twistflower (*Streptanthus bracteatus*), round hickorynut (*Obovaria subrotunda*), Big  
19 Creek crayfish (*Faxonius peruncus*), St. Francis River crayfish (*Faxonius quadruncus*); a  
20 90-day finding for least chub (*Iotichthys phlegethontis*); a 12-month finding for Fish Lake  
21 Valley tui chub (*Siphateles bicolor ssp. 4*); finalization of critical habitat designation for  
22 slickspot peppergrass (*Lepidium papilliferum*); and designation of critical habitat for  
23 Barrens topminnow (*Fundulus julisia*);  
24  
25  
26  
27

1 WHEREAS, FWS has since taken actions with respect to seven of these species:  
2 round hickorynut, 88 Fed. Reg. 14,794 (March 9, 2023); bracted twistflower, 88 Fed. Reg.  
3 21,844 (April 11, 2023); Wright's marsh thistle, 88 Fed. Reg. 25,208 (April 23, 2023);  
4 Big Creek and St. Francis River Crayfish, 88 Fed. Reg. 25,512 (April 27, 2023); slickspot  
5 peppergrass, 88 Fed. Reg. 28,874 (May 4, 2023); and least chub, 88 Fed. Reg. 55,991  
6 (August 17, 2023);  
7

8 WHEREAS, as a result of these post-Complaint actions taken by FWS, the Parties  
9 agree that the claims in the Complaint as to these seven species are moot, and that  
10 Plaintiff's only live claims relate to five species: Barrens topminnow, Suwannee alligator  
11 snapping turtle, alligator snapping turtle, Pearl River map turtle, and Fish Lake Valley tui  
12 chub;  
13

14 WHEREAS, the Parties, through their authorized representatives, and without any  
15 final adjudication of the issues of fact or law with respect to Plaintiff's claims, have  
16 negotiated a settlement that they consider to be a just, fair, adequate, and equitable  
17 resolution of the disputes set forth in Plaintiff's Complaint;  
18

19 WHEREAS, the Parties agree that settlement of this action in this manner is in the  
20 public interest and is an appropriate way to resolve Plaintiff's Complaint;  
21

22 NOW, THEREFORE, the Parties hereby stipulate and agree as follows:  
23

24 1. On or before June 20, 2024, FWS will submit to the Office of the Federal Register  
25 a final listing determination for the Suwannee alligator snapping turtle, pursuant to the  
26 ESA, 16 U.S.C. § 1533(b)(6).  
27

1       2. On or before June 27, 2024, FWS will submit to the Office of the Federal Register  
2 a proposed rule designating critical habitat for the Barrens topminnow, pursuant to the  
3 ESA, 16 U.S.C. § 1533(a)(3)(A).  
4

5       3. On or before July 11, 2024, FWS will submit to the Office of the Federal Register  
6 a final listing determination for the Pearl River map turtle, pursuant to the ESA, 16 U.S.C.  
7 § 1533(b)(6).  
8

9       4. On or before December 15, 2024, FWS will submit to the Office of the Federal  
10 Register a final listing determination for the alligator snapping turtle pursuant to the ESA,  
11 16 U.S.C. § 1533(b)(6).  
12

13       5. On or before May 17, 2025, FWS will submit to the Office of the Federal Register  
14 a 12-month finding as to whether the listing of the Fish Lake Valley tui chub as threatened  
15 or endangered is (a) not warranted; (b) warranted; or (c) warranted but precluded by other  
16 pending proposals, pursuant to the ESA, 16 U.S.C. § 1533(b)(3)(B).  
17

18       6. The Order entering this Agreement may be modified by the Court upon good cause  
19 shown, consistent with the Federal Rules of Civil Procedure, by written stipulation  
20 between the Parties filed with and approved by the Court, or upon written motion filed by  
21 one of the Parties and granted by the Court. In the event that either party seeks to modify  
22 the terms of this Agreement, including the deadlines specified in Paragraphs 1 through 5,  
23 or in the event of a dispute arising out of or relating to this Agreement, or in the event that  
24 either party believes that the other party has failed to comply with any term or condition  
25 of this Agreement, the party seeking the modification, raising the dispute, or seeking  
26  
27

1 enforcement shall provide the other party with notice of the claim or modification. The  
2 Parties agree that they will meet and confer (either telephonically or in person) at the  
3 earliest possible time in a good-faith effort to resolve the claim before seeking relief from  
4 the Court. If the Parties are unable to resolve the claim themselves, either party may seek  
5 relief from the Court.  
6

7 7. In the event that FWS fails to meet the deadlines specified in Paragraphs 1 through  
8 5 and has not sought to modify them, Plaintiff's first remedy shall be a motion to enforce  
9 the terms of this Agreement, after following the dispute resolution procedures described  
10 above. This Agreement shall not, in the first instance, be enforceable through a proceeding  
11 for contempt of court.  
12

13 8. Plaintiff reserves the right to request attorneys' fees and costs from Federal  
14 Defendants pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g), and Federal  
15 Defendants reserve their right to contest Plaintiff's entitlement to recover fees and the  
16 amount of any such fees and do not waive any objection or defense that they may have to  
17 any fees and costs that Plaintiff requests. The Parties agree to the following schedule for  
18 addressing attorneys' fees and costs:  
19  
20

21 a. Within ninety (90) days of the entry of the order by this Court approving  
22 this Agreement, the Parties will notify the Court whether they have reached  
23 a settlement as to the payment of Plaintiff's attorneys' fees and costs by  
24 Federal Defendants.  
25

26 b. If the Parties have not reached agreement on attorneys' fees and costs at the  
27

1 time that they provide this notice to the Court, Plaintiff may move within  
2 thirty (30) days of that date for the Court to award attorneys' fees and costs.  
3 Briefing and adjudication of Plaintiff's motion for attorneys' fees and costs  
4 and Federal Defendants' opposition thereto will then proceed as provided in  
5 Local Civ. R. 7.2. In the event that Plaintiff files such a motion, Federal  
6 Defendants reserve the right to contest entitlement to and/or the  
7 reasonableness of the amount of Plaintiff's claims to attorneys' fees and  
8 costs, including the hourly rates and number of hours billed.  
9

10  
11 9. This Agreement requires only that Federal Defendants take the actions specified in  
12 Paragraphs 1 through 5. No provision of this Agreement shall be interpreted as, or  
13 constitute, a commitment or requirement that Federal Defendants take action in  
14 contravention of the ESA, the Administrative Procedure Act ("APA"), or any other law  
15 or regulation, either substantive or procedural. Nothing in this Agreement shall be  
16 construed to limit or modify the discretion accorded to Federal Defendants by the ESA,  
17 APA, or general principles of administrative law with respect to the procedures to be  
18 followed in making any determination required herein, or as to the substance of any  
19 determinations made pursuant to Paragraph 1 through Paragraph 5 of the Agreement. To  
20 challenge any determinations issued pursuant to Paragraph 1 through Paragraph 5,  
21 Plaintiff must file a separate action. Federal Defendants reserve the right to raise any  
22 applicable claims or defenses to such challenges.  
23  
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26 10. No part of this Agreement shall have precedential value in any litigation or in  
27

1 representations before any court or forum or in any public setting.

2 11. Nothing in this Agreement shall be construed or offered as evidence in any  
3 proceeding as an admission or concession of any wrongdoing, liability, or any issue of  
4 fact or law concerning the claims settled under this Agreement or any similar claims  
5 brought in the future by any other party. Except as expressly provided in this Agreement,  
6 none of the Parties waive or relinquish any legal rights, claims, or defenses they may have.  
7 This Agreement is executed for the purpose of settling Plaintiff's Complaint, and nothing  
8 herein shall be construed as precedent having preclusive effect in any other context.  
9  
10

11 12. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement  
12 that Federal Defendants are obligated to pay any funds exceeding those available or take  
13 any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other  
14 applicable appropriations law or regulation.  
15

16 13. The Parties agree that this Agreement was negotiated in good faith and that it  
17 constitutes a settlement of claims that were disputed by the Parties. By entering into this  
18 Agreement, none of the Parties waive any legal rights, claims, or defenses except as  
19 expressly stated herein. This Agreement contains all of the terms of agreement between  
20 the Parties concerning the Complaint and is intended to be the final and sole agreement  
21 between the Parties with respect thereto. The Parties agree that any prior or  
22 contemporaneous representations or understanding not explicitly contained in this written  
23 Agreement, whether written or oral, are of no further legal or equitable force or effect.  
24  
25

26 14. The undersigned representatives of each party certify that they are fully authorized  
27



1 by the party or parties they represent to agree to the terms and conditions of this  
2 Agreement and do hereby agree to the terms herein. Further, each party, by and through  
3 its undersigned representative, represents and warrants that it has the legal power and  
4 authority to enter into this Agreement and bind itself to the terms and conditions contained  
5 in this Agreement.  
6

7 15. The terms of this Agreement shall become effective upon entry of an Order by the  
8 Court ratifying this Agreement.  
9

10 16. Upon adoption of this Agreement by the Court, all counts of Plaintiff's Complaint  
11 and all claims asserted therein shall be dismissed with prejudice. Notwithstanding the  
12 dismissal of this action, however, the Parties hereby stipulate and respectfully request that  
13 the Court retain jurisdiction to oversee any motion for attorneys' fees and costs,  
14 compliance with the terms of this Agreement, and to resolve any motions to modify such  
15 terms, until Federal Defendants satisfy their obligations under this Agreement. *See*  
16 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).  
17  
18  
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20 Dated: April 25, 2024

21 Respectfully Submitted,

22 TODD KIM,  
23 Assistant Attorney General  
24 S. JAY GOVINDAN, Section Chief  
25 NICOLE M. SMITH, Assistant Section Chief

26 /s/ Joseph W. Crusham  
27 Joseph W. Crusham, Trial Attorney  
CA Bar No. 324764

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United States Department of Justice  
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Wildlife & Marine Resources Section  
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*Attorney for Plaintiff*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 25, 2024, I filed the foregoing Stipulated Settlement Agreement electronically through the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as reflected on the Notice of Electronic Filing.

/s/ Joseph W. Crusham  
Joseph W. Crusham  
U.S. Department of Justice